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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1290

RIN 2590-AA38

Federal Home Loan Bank Community Support Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its community support regulation by requiring the Federal Home Loan Banks (Banks) to monitor and assess the eligibility of each Bank member for access to long-term advances through compliance with the regulation's Community Reinvestment Act of 1977 (CRA) and first-time homebuyer standards. The proposed rule would also replace the current practice in which members submit to FHFA biennial community support statements containing their most recent CRA evaluations. Instead, the Banks would verify a member's CRA rating from publicly-available information from the Federal Financial Institutions Examination Council (FFIEC) or the member's primary Federal banking regulatory agency. In addition, the Banks would be responsible for overseeing members' compliance with first-time homebuyer requirements.

DATES: Written comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590-AA38, by any of the following methods:

- E-mail: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to RegComments@fhfa.gov. Please include “RIN 2590-AA38” in the subject line of the message.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include “RIN 2590-AA38” in the subject line of the message.
- Hand Delivered/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA38, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged in at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA38, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Associate Director, (202) 408-2537, or Rafe R. Ellison, Senior Program Analyst, (202) 408-2968, Brian Doherty, Manager, (202) 408-2991, Office of Housing and Regulatory Policy, 1625 Eye Street, NW., Washington, DC 20006. (These are not toll-free numbers.) For

legal matters, contact Kevin Sheehan, Assistant General Counsel, (202) 414–8952, or Sharon Like, Managing Associate General Counsel, (202) 414–8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. (These are not toll-free numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

Section 10(g) of the Federal Home Loan Bank Act of 1932 (Bank Act), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), requires FHFA to adopt regulations establishing standards of community investment or service for members of Banks to maintain access to long-term advances. See 12 U.S.C. 1430(g). Section 10(g) further states that such regulations “shall take into account factors such as a member’s performance under the Community Reinvestment Act

of 1977 and the member's record of lending to first-time homebuyers." Id.

Regulations implementing these community support requirements were first published on November 21, 1991. See 56 FR 58639 (Nov. 21, 1991). The original regulation required members to submit to FHFA community support statements comprising CRA evaluation reports and other supporting documentation. Members not subject to the CRA were required to submit documentation evidencing that they engaged in activities related to community support. The community support regulation was substantially amended to its current form by a final rule published on May 29, 1997. See 62 FR 28983. The amendments streamlined the regulatory mandate by requiring members to submit one-page community support statements, a significant reduction to the documentation standards of the original regulation. Under the community support regulation in effect today, FHFA generally reviews, on a biennial basis, each member's CRA performance and record of lending to first-time homebuyers, to evaluate the member's compliance with the community support standards and determine ongoing eligibility for access to long-term Bank advances. See 12 CFR part 1290. A long-term advance is defined as an advance with a term to maturity greater than one year. 12 CFR 1290.1. In addition, FHFA requires each Bank to establish and maintain a community support program that provides technical assistance to its members and promotes and expands affordable housing finance. 12 CFR 1290.6.

III. Analysis of Proposed Rule

The proposed rule would revise the current community support regulation to require the Banks, as part of their community support programs, to evaluate and determine members' compliance with the community support requirements and whether

members maintain access to long-term Bank advances. The Banks would be required to establish policies and procedures for evaluating and determining their members' community support compliance under their community support programs.

The Banks currently are required to adopt Member Product Policies addressing the Banks' management of their advances and other products offered to members, and are responsible for determining the terms and conditions under which they will make advances to their members. See § 917.4 of this title, part 1266 of this chapter. Requiring the Banks to adopt policies and procedures for community support evaluations, to conduct the evaluations, and to make decisions on any restrictions on access to long-term advances, would be consistent with their general advances underwriting responsibilities.

While FHFA would no longer be directly involved in determining members' community support compliance, FHFA would exercise its general regulatory authority to oversee the Banks' compliance with their community support program policies and procedures and the community support regulation, consistent with how FHFA regularly performs its oversight responsibilities with respect to the Banks' other mission-related activities.

The specific provisions of the proposed rule are discussed further below.

A. Definitions—Proposed § 1290.1

Proposed § 1290.1 would continue to set forth definitions applicable to the community support requirements in part 1290. A number of terms that are currently defined in § 1290.1 would remain substantially unchanged, including the definitions of “Advisory Council,” “appropriate Federal banking agency,” “appropriate State regulator,” “Bank,” “CDFI Fund,” “community development financial institution or

CDFI,” “CRA,” “CRA evaluation,” “FHFA,” “long-term advance,” and “targeted community lending.” The term “restriction on access to long-term advances” would no longer be a separately defined term because the substance of the existing definition would be incorporated into proposed § 1290.3(a).

Section 1290.1 currently defines “first-time homebuyer” to include individuals who have not owned a principal residence during the three-year period prior to purchasing a home. The definition includes displaced homemakers and single parents that would meet this criterion but for prior ownership of a home with a spouse or residence in a home owned by a spouse. The current definition was based on the definition of “first-time homebuyer” under section 104 of the Cranston-Gonzalez National Affordable Housing Act. See 42 U.S.C. 12704. This statutory definition was subsequently amended to include individuals whose previous home was either a manufactured home not permanently affixed to a permanent foundation or a substandard home that could not be brought into compliance with relevant building codes for less than the cost of constructing a permanent structure. The current definition of “first-time homebuyer” in § 1290.1 does not reflect those amendments.

Proposed § 1290.1 would remove the definition of “first-time homebuyer” in order to be consistent with FHFA’s Affordable Housing Program (AHP) regulation. The AHP regulation does not define the term, leaving the definition to be determined at the discretion of each Bank. See 12 CFR 1291.1. Accordingly, the terms “displaced homemaker” and “single parent,” which appear only in the “first-time homebuyer” definition, would also be removed. FHFA specifically requests comment on whether the definition of “first-time homebuyer” should be removed, whether the definition should be

maintained in its current form, or whether the definition should be revised to reflect the statutory amendment that addressed previous ownership of manufactured or substandard housing.

B. Bank Community Support Program—Proposed § 1290.2

1. Community Support Program

Proposed § 1290.2(a) would set forth requirements that appear in current § 1290.6 related to the Bank's community support program, including that each Bank's program: provide technical assistance to members; promote and expand affordable housing finance; and include an annual Targeted Community Lending Plan. See also 12 CFR 952.4. The proposed rule would add a new paragraph (a)(1) requiring each Bank to establish policies and procedures for the Bank's evaluation and determination of community support compliance by its members under its community support program. Each Bank's community support program policies would be required to include a CRA standard and a first-time homebuyer standard, as further discussed below. In addition, the Bank's community support program policies and procedures would include policies and procedures for verifying members' compliance with the two community support standards through collection and review of members' CRA ratings and their first-time homebuyer support statements, as well as any other appropriate information.

2. Evaluation and determination of compliance

Proposed § 1290.2(b) would require each Bank to evaluate and determine its members' compliance with the first-time homebuyer standard and the CRA standard, as applicable, pursuant to the Bank's community support program policies and procedures and the requirements of the regulation.

3. Public comments

Under current § 1290.2, FHFA notifies the applicable Bank and the public by **Federal Register** notice of specific members selected for community support review. The Bank is also required to provide written notice to the members selected for community support review, its Advisory Council, and to nonprofit housing developers, community groups, and other interested parties in its district of the name and address of each member within its district that has to submit a Community Support Statement Form during the calendar quarter. In reviewing a member's Community Support Statement Form for evidence of the member's compliance with the community support requirements, FHFA is required to take into consideration any public comments received concerning members of all 12 Banks. In the previous two calendar years, FHFA has received only a small number of public comments concerning the community support programs and activities of members of the 12 Banks.

Under the proposed rule, the Banks would be required to assess a member's compliance with the community support requirements by determining whether a member received a CRA rating of Satisfactory or above, and determining whether the member engaged in eligible first-time homebuyer activities. Although the Banks do not publish in the **Federal Register**, solicitation by the Banks of public comments on members' community support programs and activities could be implemented by the Banks posting notices on their public websites. Under such a public notification process, each Bank would receive comments only with respect to its own members. Accordingly, in view of the importance of public engagement, proposed § 1290.2(c) would require the Banks to include notices on their websites inviting comments on any member's community

support programs or activities, and to consider any comments received in determining the member's compliance. FHFA requests comment on whether the public comment process would be enhanced if the Banks were required to give public notice when specific members are selected for community support review, or whether such notice should be at the discretion of each Bank.

C. Restrictions on Access to Long-Term Advances—Proposed § 1290.3

Under current § 1290.5, if FHFA determines that a member should be placed on restriction from long-term advances for failure to meet the community support standards, FHFA notifies the Bank and the member of its determination and the reasons, and directs the Bank to deny the member's requests for long-term advances. Such members would also be denied access to the AHP and the Community Investment Cash Advances (CICA) Programs. If the member subsequently complies with the community support standards, FHFA informs the Bank that the member's access to long-term advances should be restored.

Proposed § 1290.3(a) would replace § 1290.5 and would provide that a Bank shall not approve a member's request for long-term advances unless the Bank has determined that the member is in compliance with the first-time homebuyer standard and the CRA standard, as applicable. A member subject to a long-term advance restriction who subsequently complies with the community support standards is eligible again for long-term advances and the long-term advance restriction shall be removed. The Bank would be required to develop policies and procedures that it determines are appropriate to ensure that it makes timely determinations and communicates with its members as necessary.

Current § 1290.5(d)(i) permits a member to seek from FHFA an exception to a long-term advances restriction if the member's appropriate Federal banking or State regulator determines that restricting the member's access to advances would adversely affect the member's safety and soundness. Since, under the proposed rule, the Banks would be determining whether members should be subject to long-term advances restrictions, proposed § 1290.3(b) would provide that members may submit requests for safety and soundness exceptions to their Bank, rather than to FHFA, for decision.

Consistent with the requirements of the current regulation, the member's written request shall contain a clear and concise statement of the basis for the request, and a statement from the member's appropriate Federal banking agency, or the member's appropriate State regulator for a member that is not subject to regulation or supervision by a Federal regulator, that application of the restriction may adversely affect the safety and soundness of the member. The Bank would be required to consider each written request within 30 calendar days of receipt.

Consistent with the current regulation, proposed § 1290.3(c) would provide that any member that is ineligible for long-term advances due to a failure to meet the community support requirements would also be ineligible to submit new applications under the Banks' AHP under 12 CFR part 1291, or under the Bank's CICA programs offered under 12 CFR part 952.

D. Exemption for CDFIs—Proposed § 1290.4

Section 1290.2(e) of the existing regulation provides that a member that has been certified as a community development financial institution (CDFI) by the CDFI Fund, other than a member that also is an insured depository institution or a CDFI credit union

(as defined in 12 CFR 1263.1), is deemed to be in compliance with the community support standards by virtue of such certification and shall not be subject to community support review by any Bank. The proposed rule would relocate this provision unchanged to § 1290.4. For additional discussion of this provision, see the final rule entitled “Federal Home Loan Bank Membership for Community Development Financial Institutions,” 75 FR 678, 689-690 (Jan. 5, 2010).

E. CRA Standard—Proposed § 1290.5

1. Verification of CRA Rating

Proposed § 1290.5(a) would provide that for each member that is subject to the requirements of the CRA, the Bank shall, in accordance with its community support program policies and procedures, verify the member’s rating in its most recent CRA evaluation with that member’s appropriate Federal banking agency or from information made publicly available by FFIEC. As under the current regulation, the Banks would not be required to evaluate the compliance of credit unions and insurance companies under the CRA standard, as they are not subject to the CRA and are only subject to the first-time homebuyer standard.

In complying with proposed § 1290.5(a), the Banks would be required to routinely verify members’ CRA ratings, which would eliminate the current gap in monitoring compliance with the CRA standard. Under the current regulation, FHFA reviews each member’s CRA rating once every two years. This existing practice enables a member to maintain access to long-term advances for up two years after receiving a rating of “Substantial Noncompliance.” For example, if a member received a rating of “Satisfactory” on its July 2007 CRA evaluation and was notified that it needed to submit

a community support statement in June 2009, the member could report to FHFA the results of the July 2007 CRA evaluation. However, if this same member then received a rating of “Substantial Noncompliance” on its July 2009 CRA evaluation, it would not have to report this information to FHFA until it is required to submit its next community support statement in June 2011. During this period where the most recent CRA rating is “Substantial Noncompliance,” the member would continue to have access to long-term advances.

FFIEC routinely publishes on its website the latest CRA ratings of financial institutions supervised by the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision. The Banks could obtain CRA rating information from FFIEC’s website to ensure that only members with “Satisfactory” or “Outstanding” ratings have access to long-term advances. The Banks should be able to readily and routinely obtain the necessary CRA ratings information from the FFIEC website. Under proposed § 1290.2(a)(1), each Bank would be required to establish policies and procedures for its review of its members’ CRA ratings.

2. Compliance with CRA Standard

Consistent with current § 1290.3(b), proposed § 1290.5(b) would provide that a member has met the CRA standard if the member received a rating of “Outstanding” or “Satisfactory” in its most recent CRA evaluation. The proposed rule would change the current regulation by requiring that the Banks allow access to long-term advances only for members with ratings of “Satisfactory” or higher on their most recent CRA evaluations.

Current § 1290.3(b)(2) provides that a member with a most recent CRA rating of “Needs to Improve” continues to have access to long-term advances but is placed on probation. If the member’s subsequent CRA rating is “Satisfactory” or “Outstanding,” the member is removed from probation. A member with a CRA evaluation of “Substantial Noncompliance” on its most recent CRA evaluation, or with two consecutive CRA ratings of “Needs to Improve” on its most recent two CRA evaluations, is required to be placed on restriction from access to long-term advances. Current § 1290.5(a) also requires FHFA to require that members that fail to submit complete community support statements be placed on restriction from access to long-term advances. In order for access to long-term advances to be restored, a member must receive a CRA rating of “Satisfactory” or above on its next CRA evaluation and submit a complete community support statement.

FHFA has concluded that requiring at least a “Satisfactory” rating on a member’s most recent CRA evaluation is an appropriate standard to be eligible for long-term advances because the standard may provide additional incentive for members to consistently meet the credit needs of the communities they serve. Additionally, based on historical evaluation rating data, removing the probationary period for members rated less than “Satisfactory” would likely affect or have an impact on only a small percentage of members. Slightly more than two percent of institutions that were subject to CRA evaluations from 2008 to 2010 received ratings of “Needs to Improve.”

Because the proposed rule would prohibit Banks from making long-term advances to members after a single CRA rating of “Needs to Improve,” this policy could restrict a member’s ability to use long-term advances to address the deficiencies that led to the

“Needs to Improve” rating. FHFA specifically requests comment on whether members with a single CRA rating of “Needs to Improve” should be restricted from accessing long-term advances, or whether such members should be placed on probation, but maintain access pending their next CRA rating, similar to existing practice.

F. First-time Homebuyer Standard—Proposed § 1290.6

1. Eligible First-Time Homebuyer Programs and Activities

Current § 1290.3(c)(1) and FHFA’s existing Community Support Statement Form set forth the specific first-time homebuyer programs and activities that are eligible to meet the first-time homebuyer standard. Under proposed § 1290.6(a), the following substantially similar first-time homebuyer programs and activities would be eligible for purposes of meeting the first-time homebuyer standard:

- Member’s established record of lending to first-time homebuyers;
- In-house first-time homebuyer programs, such as marketing plans and outreach programs;
- Other in-house lending products that serve first-time homebuyers;
- Underwriting standards that are appropriate for first-time homebuyers and consistent with safe and sound lending practices;
- Participation in non-governmental first-time homebuyer programs;
- Participation in federal government programs that serve first-time homebuyers;
- Participation in state or local government programs targeted to first-time homebuyers;
- Financial support or technical assistance to community groups or

organizations that assist first-time homebuyers;

- Participation in loan consortia that make loans to first-time homebuyers;
- Participation in or support of special counseling or homeownership education targeted to first-time homebuyers; and
- Participation in investments or loans that support first-time homebuyer programs.

In addition, a Bank would have discretion to determine other first-time homebuyer programs and activities as eligible to meet the first-time homebuyer standard.

FHFA requests comment on whether the above list of programs and activities should be revised in any way. FHFA also requests comment on the degree of discretion the Banks should have in determining what first-time homebuyer programs and activities should be eligible for purposes of meeting the first-time homebuyer standard. For example, an alternative would be to allow each Bank at its discretion to determine all eligible first-time homebuyer programs and activities, which may enable the Bank to be more responsive to particular housing needs in its district. FHFA also requests comment on whether an alternative approach giving Banks more discretion to determine eligible first-time homebuyer programs and activities should include a requirement that a Bank consult with its Advisory Council in making such determination.

2. Compliance with First-Time Homebuyer Standard

As in the current regulation, proposed § 1290.6(b) would provide that a member that has received a rating in its most recent CRA evaluation of “Outstanding” would be deemed to have satisfied the first-time homebuyer standard.

For those members with a CRA rating below “Outstanding”, the Bank would need

to require the member to have engaged in one or more eligible first-time homebuyer programs or activities in the period covered by the most recent first-time homebuyer support statement to be eligible for a long-term advance.

FHFA requests comment on whether a member should be required to engage in more than one eligible first-time homebuyer program or activity in order to be in compliance with the first-time homebuyer standard, and if so, how many such programs or activities should be required. FHFA also requests comment on whether the regulation should specify a particular number of such programs or activities, or whether each Bank should have discretion to determine that number.

3. First-Time Homebuyer Support Statement

Under current § 1290.2(c), each member selected by FHFA for community support review is required to submit to FHFA a Community Support Statement Form prescribed by FHFA that contains both the member's CRA evaluation and identification of the member's eligible first-time homebuyer programs or activities from the list set forth in the Form. Under proposed § 1290.6(c), members would submit to the Bank first-time homebuyer support statements in which the member would identify and describe the eligible first-time homebuyer programs or activities in which it had engaged. Each Bank would prescribe the form of the first-time homebuyer support statement, which would set forth all of the eligible first-time homebuyer programs and activities under proposed § 1290.6(a). Each member would be required to submit a completed first-time homebuyer support statement to its Bank at least once every two calendar years, which is consistent with FHFA's current biennial schedule for reviewing members' community support

compliance. As in the current regulation, the accuracy of the first-time homebuyer support statement would be required to be certified by a senior officer of the member.

G. Reports—Proposed § 1290.7

The proposed rule would add a requirement for each Bank to submit a report annually by May 1 to FHFA that identifies the results of the Bank's community support compliance determinations for that year, including whether any members are subject to restrictions on access to long-term advances.

IV. Paperwork Reduction Act

A. Summary of Proposed Information Collection

FHFA has submitted an analysis of the revisions to the currently approved collection of information contained in this proposed rule to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3507(d). Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. See 44 U.S.C. 3512(a).

FHFA currently collects information biennially from Bank members regarding their compliance with the community support standards under existing part 1290. Existing part 1290 also permits Bank members whose access to long-term advances has been restricted for failure to meet the community support standards to apply directly to FHFA to remove the restriction under certain circumstances. The current collection of information has been approved by OMB, and the control number, OMB No. 2590-0005, will expire on October 31, 2012. The proposed rule would amend the community support requirements in part 1290 and require the Banks to collect compliance information from

their members and process requests to remove restrictions on members' access to advances. The changes in the proposed rule would not substantively or materially modify the approved information collection with respect to the members' information collection burden, although it would materially decrease the time and hour burden on FHFA.

Need for and proposed use of information: Under the proposed rule, Bank members would be required to satisfy the community support requirements in order to maintain continued access to long-term advances. The proposed collection of information from each Bank member is necessary to enable the Banks to determine whether their members satisfy those community support requirements. Members may also find it necessary to submit information to the Banks to request the removal of restrictions on the members' access to long-term advances. The collection of information contained in part 1290 of the proposed rule is described more fully in part III of the **Supplementary Information**.

Respondents: Likely respondents are institutions that are members of a Bank.

B. Burden Estimate

FHFA estimates the total annualized hour burden for all members of the proposed information collection to be 4,115 hours. This estimate includes the biennial submission of first-time homebuyer support statements by all members, as well as any requests by members for removal of restrictions on access to long-term advances. FHFA estimates that an average of 4,100 members will submit responses each year regarding their first-time homebuyer programs and activities. FHFA estimates each response will take an average of .75 hours to prepare and process, for an annual total of 3,075 hours (4,100 member responses x .75 hours = 3,075 hours). FHFA estimates that the responses, on

average, will take an additional .25 hours for review and certification by an appropriate senior officer, for an annual total of 1,025 hours (4,100 member responses x .25 hours = 1,025 hours).

FHFA estimates that an average of 15 members each year will submit requests to remove restrictions on access to long-term advances. FHFA estimates that these requests, on average, will take .75 hours to prepare and process, for an annual total of 11.25 hours (15 member requests x .75 hours = 11.25 hours). FHFA estimates that the requests, on average, will take an additional .25 hours for review by an appropriate senior officer, for an annual total of 3.75 hours (15 member requests x .25 hours = 3.75 hours).

Costs: FHFA estimates that there will be no annualized capital/start-up costs for the members to collect and submit the information.

C. Comment Request

FHFA will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above. Comments may also be submitted in writing to OMB (please also submit comments to FHFA for timely receipt and review) at the following address:

Attention: Desk Officer for Federal Housing Finance Agency
Office of Information and Regulatory Affairs, Room 10102
New Executive Office Building
725 17th Street, NW
Washington, DC 20503

Written comments are requested on: (1) Whether the proposed collection of information is necessary for the proper performance of FHFA functions, including

whether the information has practical utility; (2) The accuracy of FHFA estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the proposed collection of information on members, including through the use of automated collection techniques or other forms of information technology.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1290

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the **Supplementary Information**, FHFA proposes to amend title 12, chapter XII, of the Code of Federal Regulations to read as follows:

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

Sec.

1290.1 Definitions.

1290.2 Bank community support program.

1290.3 Restrictions on access to long-term advances.

1290.4 Exemption for CDFIs.

1290.5 CRA standard.

1290.6 First-time homebuyer standard.

1290.7 Reports.

Authority: 12 U.S.C. 1430(g), 4511, 4513, 4526.

§ 1290.1 Definitions.

For purposes of this part:

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449), and part 1291 of this chapter.

Appropriate Federal banking agency has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally insured credit unions, means the National Credit Union Administration.

Appropriate State regulator means any State officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a particular institution.

Bank means a Federal Home Loan Bank established under section 12 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)).

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.).

CRA means the Community Reinvestment Act of 1977, as amended (12 U.S.C. 2901 et seq.).

CRA evaluation means the public disclosure portion of the CRA performance evaluation provided by a Bank member's appropriate Federal banking agency.

FHFA means Federal Housing Finance Agency.

Long-term advance means an advance with an original term to maturity greater than one year.

Targeted community lending means providing financing for economic development projects for targeted beneficiaries, as defined in part 952 of this title.

§ 1290.2 Bank community support program.

(a) Requirement. Consistent with the safe and sound operation of the Bank, each Bank shall establish and maintain a community support program. A Bank shall, under its community support program:

(1) Establish policies and procedures for the Bank's evaluation and determination of community support compliance by the Bank's members;

(2) Provide technical assistance to members;

(3) Promote and expand affordable housing financing and financing for first-time homebuyers;

(4) Identify opportunities for members to expand financial and credit services in underserved neighborhoods and communities;

(5) Encourage members to increase their targeted community lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in targeted community lending or affordable housing finance partnerships with members; and

(6) Include an annual Targeted Community Lending Plan, as required by § 952.4 of this title, approved by the Bank's board of directors and subject to modification, which shall require the Bank to—

(i) Conduct market research in the Bank's district;

(ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank's district for targeted community lending;

(iii) Consult with its Advisory Council and with members, housing associates, and public and private economic development organizations in the Bank's district in developing and implementing its Targeted Community Lending Plan; and

(iv) Establish quantitative targeted community lending performance goals.

(b) Bank evaluation and determination of community support compliance.

Pursuant to the Bank's community support program policies and procedures and the requirements of this part, each Bank shall evaluate and determine compliance of each of its members with the first-time homebuyer standard and the CRA standard, as applicable.

(c) Public comments. Each Bank shall include a notice on its website informing the public of the opportunity to submit comments on the community support programs

and activities of Bank members and explaining how to submit such comments. In determining the community support compliance of a member, a Bank shall take into consideration any public comments it has received concerning the member.

§ 1290.3 Restrictions on access to long-term advances.

(a) Restriction on access to long-term advances. A Bank shall not approve a member's request for a long-term advance, including renewal of a maturing advance for a term to maturity greater than one year, unless the Bank has determined that the member is in compliance with the first-time homebuyer standard and the CRA standard, as applicable.

(b) Safety and soundness exception. A Bank may remove restrictions on a member's access to long-term advances imposed under this section if the Bank determines that application of the restriction may adversely affect the safety and soundness of the member. A member that seeks removal from restriction must submit a written request to the Bank to remove the restriction under this paragraph (b). Such written request shall contain a clear and concise statement of the basis for the request, and a statement from the member's appropriate Federal banking agency, or the member's appropriate State regulator for a member that is not subject to regulation or supervision by a Federal regulator, that application of the restriction may adversely affect the safety and soundness of the member. The Bank shall consider each written request within 30 calendar days of receipt.

(c) Affordable Housing Program (AHP) and Community Investment Cash Advance (CICA) Programs. A member that is restricted from access to long-term advances under this part is not eligible to participate in the AHP under part 1291 of this

chapter, or in any CICA program offered under part 952 of this title. The restriction in this paragraph (c) does not apply to AHP or CICA applications or funding approved before the date the restriction is imposed.

§ 1290.4 Exemption for CDFIs.

A member that has been certified as a CDFI by the CDFI Fund, other than a member that also is an insured depository institution or a CDFI credit union (as defined in § 1263.1 of this chapter), is deemed to be in compliance with the community support standards under this part by virtue of such certification and shall not be subject to community support review by any Bank under this part.

§ 1290.5 CRA standard.

(a) Verification of CRA rating. For each member that is subject to the requirements of the CRA, the Bank shall, in accordance with its community support program policies and procedures, verify the rating in the member's most recent CRA evaluation with that member's appropriate Federal banking agency or from information made publicly available by the Federal Financial Institutions Examination Council.

(b) Compliance with CRA standard. A member shall be in compliance with the CRA standard if the member received a rating of "Outstanding" or "Satisfactory" in its most recent CRA evaluation.

§ 1290.6 First-time homebuyer standard.

(a) Eligible first-time homebuyer programs and activities. The following programs and activities are eligible first-time homebuyer programs and activities for purposes of determining Bank members' compliance with the first-time homebuyer standard:

- (1) An established record of lending to first-time homebuyers;
- (2) In-house first-time homebuyer programs, such as marketing plans and outreach programs;
- (3) Other in-house lending products that serve first-time homebuyers;
- (4) Underwriting standards that are appropriate for first-time homebuyers and consistent with safe and sound lending practices;
- (5) Participation in non-governmental first-time homebuyer programs;
- (6) Participation in federal government programs that serve first-time homebuyers;
- (7) Participation in state or local government programs targeted to first-time homebuyers;
- (8) Financial support or technical assistance to community groups or organizations that assist first-time homebuyers;
- (9) Participation in loan consortia that make loans to first-time homebuyers;
- (10) Participation in or support of special counseling or homeownership education targeted to first-time homebuyers;
- (11) Participation in investments or loans that support first-time homebuyer programs; and
- (12) Other first-time homebuyer programs or activities, as determined by a Bank in its discretion.

(b) Compliance with first-time homebuyer standard. A member shall be in compliance with the first-time homebuyer standard if the member has engaged in one or more eligible first-time homebuyer programs or activities in the period covered by the

most recent first-time homebuyer support statement. A member that has received a rating in its most recent CRA evaluation of “Outstanding” shall be deemed to be in compliance with the first-time homebuyer standard.

(c) First-time homebuyer support statement. Each Bank shall prescribe the form of the first-time homebuyer support statement to be completed by its members, which shall set forth all of the eligible first-time homebuyer programs and activities under paragraph (a) of this section. The Bank shall require members to submit a completed first-time homebuyer support statement to the Bank at least once every two calendar years. The Bank shall require each member to identify and describe the eligible first-time homebuyer programs or activities engaged in by the member on the first-time homebuyer support statement. The accuracy of the first-time homebuyer support statement shall be certified by a senior officer of the member. A member that has received a rating in its most recent CRA evaluation of “Outstanding” shall not be required to submit a first-time homebuyer support statement.

§ 1290.7 Reports.

Each Bank shall submit a report annually by May 1 to FHFA that identifies the results of the Bank’s community support compliance determinations for that year, including whether any members are subject to long-term advances restrictions.

Edward J. DeMarco
Acting Director, Federal Housing Finance Agency.

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